

Issued February 6, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1895.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED ADULTERATION AND MISBRANDING OF GRAPE JUICE.

On November 1, 1910, the United States Attorney for the Western District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Mohn Wine Co., a corporation doing business at Niles, Mich., alleging the shipment by said company on or about August 16, 1909, from the State of Michigan into the State of Illinois of a quantity of grape juice which was alleged to have been adulterated and misbranded. The product was labeled: (On bottle) "Guaranteed under Pure Food and Drugs Act, June 30-1906, Serial No. 4825 Grape Juice Pure Unfermented, Thrice Sterilized, August Zeigenhager, Chicago". (On case) "12 Bottles Grape Juice, Pressed and prepared at the Belvidere Vineyards, Berrien County, Michigan."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results:

Specific gravity 15.6° C./15.6° C.....	1.0608
Alcohol (per cent by volume).....	1.20
Solids, by gravity at 20° C. (grams per 100 cc.).....	16.27
Nonsugar solids (grams per 100 cc.).....	2.50
Sucrose by Clerget (grams per 100 cc.).....	2.08
Reducing sugar invert (grams per 100 cc.).....	11.69
Polarization direct temperature 20° C.....°V..	-0.8
Polarization invert temperature 20° C.....°V..	-3.4
Polarization invert 87° C.....°V..	-0.4
Soluble phosphoric acid (mg per 100 cc).....	17.9
Acids as tartaric (grams per 100 cc).....	0.52
Color	Natural
Solids by drying (grams per 100 cc).....	16.30
Sulphurous acid (SO ₂).....	Trace.

Adulteration was alleged in the information for the reason that the grape juice had added to it cane sugar and was partially fermented. Misbranding was alleged for the reason that the labels on

the bottles were false and misleading and tended to deceive the purchaser thereof into the belief that the product was absolutely pure unfermented juice of the grape, when, in truth and in fact, it was partly fermented grape juice and cane sugar, which statements and representations were false and untrue and misleading and deceptive to the purchaser.

On October 11, 1911, the cause having come on for trial before the court and a jury a verdict of not guilty was returned by the jury at the direction of the court. The opinion of the court directing a verdict of not guilty follows:

Gentlemen of the Jury: In this case I have been requested by counsel for the defendant to direct you to render a verdict of not guilty, and for reasons which I do not need to state at large, at this time, I am constrained to hold that it is my duty to so instruct you.

The ground or basis of such instruction is, in a way, technical; in another way, there has been an invasion of a substantial right on the part of this defendant—a right given to him by the Act of Congress under which this prosecution is had.

It appears by the undisputed evidence in this case that this defendant did introduce into inter-state commerce a certain number of bottles of grape juice manufactured by it in this state and shipped by it, by the Michigan Central Railroad, to Chicago, Ill. That would constitute inter-state commerce. It also appears by the undisputed evidence in the case that the bottles containing the grape juice were labeled "Grape Juice. Pure, unfermented, thrice sterilized." It also appears by the proofs in the case that there had been added to the grape juice a foreign substance, consisting of granulated cane sugar; that the purpose of adding cane sugar to the grape juice was to make it of a uniform degree of sweetness. It does not appear that the addition of cane sugar to grape juice made an injurious or deleterious product.

The Act of Congress provides that any person who shall introduce into inter-state commerce any food product that is mis-branded or adulterated will be guilty of a misdemeanor, and if convicted shall be punished. The Act also provides what shall constitute adulteration of a food product and what shall constitute a mis-branding. It is a mis-branding of a food product to put a label upon a case or bottle which in any way misleads or will mislead the purchaser; and the test is, would the ordinary layman, the purchaser, be misled by the label upon the package from a casual observation of the same. If he would, that is a mis-branding. If he would not, it is not a mis-branding. The Act has been passed for the protection of consumers and purchasers.

It is not necessary, to constitute a mis-branding, that the substance which is defined in the label should be injurious to health, or in any way. It is sufficient if there is something contained in the product which the label misleads. In other words, in this case, this grape juice was labeled "Pure unfermented grape juice." That label was misleading, because under the undisputed evidence in this case it was not pure grape juice. It had added to it a foreign ingredient, something not derived from the grape, something not contained in the juice of the grape. There had been added to it cane sugar, which is not derived from the grape; and the purpose of the Act is that the purchaser may know what he is buying; then he can purchase it or not, as he sees fit, but he is entitled to know and he is entitled not to be misled or deceived as to what he is buying.

So that I have not any question but what the act of this defendant in introducing into inter-state commerce this grape juice, the bottles containing which were labeled in the manner shown by the evidence, constituted a violation of this Act.

It is also the claim of the Government in this case that the grape juice which was shipped from this state to the state of Illinois by the defendant was not unfermented. It is the contention of the Government that at the time of the shipment this grape juice was partially fermented. If that were true, it was a violation of this Act, it was a mis-branding. If the case were to be submitted to you that would be a question of fact for you to determine from the evidence in the case, as to whether or not at the time of the shipment the grape juice in question was fermented.

But upon another branch of the question, I am constrained to take the case away from your consideration. This same Act of Congress, in another section, affords the defendant in a case of this kind a substantial right. It is provided that the officers of the Department of Agriculture shall make an examination of specimens of food which it is claimed have been either adulterated or mis-branded, and after such examination shall have been made, and after an analysis shall have been made, it shall then be the duty of the Department of Agriculture, through its proper officers, to give notice to the alleged violator of the law and afford him an opportunity to be heard. In other words, there shall be a hearing, and the defendant shall be given an opportunity to show that he is not a violator of the law and to demonstrate that a prosecution ought not to be instituted, and that is required to be done prior to the institution of a criminal proceeding. In other words, it is a condition precedent to the institution of such a proceeding as has been instituted in this case. It does not appear in the proofs that any such examination was made, and it does not appear that any hearing was had prior to the institution of this proceeding. It is not alleged in the information in this case, and it is necessary that it should be alleged in the information, and also that it shall be proven in the case. There is no proof of that kind; there is no allegation in this information, and for that reason I am constrained to hold that this is not a case for your consideration. The failure, if there was a failure, to give this defendant an opportunity to be heard and make such explanation as he desired before he should be prosecuted criminally, was a substantial right which ought to have been accorded him, and the Government had no right to institute a proceeding until that hearing had been given. That only applies in a case where the prosecution is instituted at the instigation of the officers of the Department of Agriculture. Had this case been prosecuted in the ordinary way upon an indictment found by a Grand Jury, and upon an investigation made by the District Attorney, or other officers of the Government, except the officers belonging to the Department of Agriculture, such a hearing would not have been necessary, any more than it would be necessary in any other criminal case. But it is shown by the files in this case, and it is conceded by the District Attorney, that this prosecution was instigated by the officers of the Department of Agriculture. Under those circumstances it was necessary that they should give this defendant an opportunity to be heard prior to the institution of these proceedings.

For these reasons, your verdict in this case will have to be, not guilty.

Mr. Clerk, you will take the verdict.

W. M. HAYS,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *October 30, 1912.*